SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 19 1972
E. ROBERT SEAVER, CLE

APPENDIX

SUPREME COURT OF THE UNITED STATES

TERM, 1971

No. 71-257

T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petition for Certiorari filed August 20, 1971.
Certiorari granted December 7, 1971.

E. L. Mitchell, Inc., 926 Cherry Street, Kansas City, Mo. 64106, 421-2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,

Plaintiff,

vs.

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,

Defendant.

Civil Action No. 1273

DOCKET ENTRIES

Proceedings

Date	
2–20–68	Filed Petition for Removal by United States under Ti. 28, Sec. 2410(a).
2–20–68	Filed Notice of Removal (copy)
2–20–68	Filed Letters from Mr. Johnson, Attorney for Plaintiff and Mr. Cornelius, Attorney for Defendant, waiving Removal Bond
2–23–68	Received from Marion Co., Texas, District Clerk, Mrs. Nettie Mae Lemmon, the following complete file: Original Petition & Citations Defendant's First Original Answer Defendant's Application for Condemnation Defendant's First Amended Answer and Cross-Action Original Answer of General Electric Co. to Cross-Action

Original Answer of Cross-Defendant, General Electric Credit Corp. to Cross-Plaintiff's Cross-Action

Defendant's Second Amended Answer and Cross-Action

Defendant's Third Amended Answer and Cross-Action

3–22–68 Filed Third Party Defendant, United States of America, Answer and Cross-Action

4–9–68 Filed Motion of Plaintiff General Electric Credit Corp. in Reply to Answer and Cross-Action of U. S. A.

4–15–68 Filed Motion of General Electric Company to Dismiss or for more definite statement

4–24–68 Filed Memorandum of United States in Opposition to the Motion of General Electric Company to Dismiss

4–24–68 Filed Memorandum of the United States in Opposition to the Motion of General Electric Credit Corporation to Dismiss

4–24–68 Filed Answer of T. R. Grubbs to Motion of General Electric Credit Corporation to Dismiss

5–7–68 Filed Memorandum Brief of General Electric Co. in support of Motion to Dismiss or for more definite statement

5–20–68 Filed Motion of U. S. (Third Party Deft. & Cross-Pltf.) to Amend Answer and Cross-Action

6–12–68 Filed Joint Motion for Continuance

6–13–68 Filed Order Granting Continuance—Judge Joe J. Fisher—COB V. 14, P. 76

6-20-68 Filed Order Granting General Electric Credit Corp's. Motion to Add Parties Defendant (Mo. filed 4-9-68)—Judge Joe J. Fisher—COB V. 14, P. 86 (U. S. to Amend & serve copies within 15 days) (Also De

6-20-68 Filed Order Denying Motions to Dismiss Cross-Action of U. S.—Judge Joe J. Fisher—COB V. 14, P. 87

6-20-68 Filed Order Granting U. S., Third Party Deft. & Cross-Pltf., Leave to Amend—Judge Joe J. Fisher—COB V. 14, P. 88

7-1-68 Filed Original Answer of General Electric Credit Corp. to the Amended Answer and Cross-Action of the United States

7-3-68 Filed Original Answer of General Electric Company to the Amended Answer and Cross-Action of the United States

**6-20-68 Filed Amended Answer and Cross-Action of the United States

7-9-68 Filed Defendant's Third Amended Answer and Cross-Action (To be served by Summons when addresses received)

8-23-68 Filed Motion of Cullum & Boren Co. to Intervene (Thos. L. Lewis, 503 Davis Bldg., Dallas, Texas—Atty.)

9-3-68 Filed Motion of EAC Credit Corporation to Intervene (J. W. Falvey, Jr., P. O. Box 1142, Longview, Texas—Atty.)

9-13-68 Filed Motion of Goodyear Tire & Rubber Co. to Intervene (B. A. Britt, J 406 Texas Blvd., Texarkana, Texas—Atty)

10–17–68	Filed Order Granting Intervention of Cullum & Boren Co.—Judge Joe J. Fisher—COB V. 14, P. 187
10–17–68	Filed Intervention of Cullum & Boren Co.
10–17–68	Filed Order Granting Intervention of EAC Credit Corporation—Judge Joe J. Fisher—COB V. 14, P. 188
10–17–68	Filed Order Granting Intervention of Goodyear Tire & Rubber Co.—Judge Joe J. Fisher—COB V. 14, P. 189
10–17–68	Filed Intervention of Goodyear Tire & Rubber Co.
11–18–68	Filed Intervention of EAC Credit Corporation
3–6–69	Filed Motion of T. R. Grubbs, Defendant, & Cross-Plaintiff, for Production, Inspection & Copying of Documents, Books, Papers and Instruments
3–6–69	Filed Interrogatories of T. R. Grubbs, Defendant and Cross-Plaintiff, Propounded to General Electric Corp. & General Electric Credit Corp.
4–30–69	Filed Order Granting Motion of T. R. Grubbs, Cross-Plaintiff, to Inspect and Copy Documents Within 30 Days—Judge Joe J. Fisher—COB V. 15, P. 110
6–11–69	Filed Answers of General Electric Co. to Interrogatories Propounded by T. R. Grubbs
10–17–69	Filed Defendant General Electric Company's Amended Answer to the Cross-Action of T. R. Grubbs d/b/a T. R. Grubbs Tire & Appliance.
10–20–69	Filed Cross-Defendant General Electric Credit Corporation's Amended Answer to the Cross-Action of T. R. Grubbs d/b/a T. R. Grubbs Tire & Appliance.

10–28–69	In Open Court, before Judge Fisher, in Texarkana, Texas, Trial Begins, 9:00 A.M. 5:20 P.M. —Trial Recessed until 9:00 A.M., October 29, 1969.
10–28–69	Filed Pre Trial Order signed by Judge Fisher. Counsel Present. V. 16, P. 1 - - -
10–29–69	9:00 A.M.—Trial in Second Day. Defendant General Electric Co. Makes Oral Motion for Judgment—Motion Overruled. 3:15 P.M.—Trial Ends. Case taken under Advisement. Memorandum Briefs to be filed in Texarkana by December 12, 1969, unless Some Party asks for additional time, then extension will apply to all parties. Reply Briefs (if desired) to be filed by January 9, 1970, unless extension granted.
12–10–69	Filed MEMORANDUM BRIEF on Behalf of T. R. Grubbs.
12–11–69	Complete file mailed to Beaumont for Judge Fisher
12–12–69	Filed Plaintiff's ORIGINAL BRIEF (mailed to Beaumont)
12–12–69	Filed BRIEF of the Defendnat, General Electric Company (Deft.?)
12–22–69	Filed Defendant's BRIEF IN REPLY TO BRIEF OF GENERAL ELECTRIC CO.
12–22–69	Filed Defendant's BRIEF IN REPLY TO BRIEF OF GENERAL ELECTRIC CREDIT
1–12–70	Filed REPLY BRIEF OF THE DEFENDANT, General Electric Co. (Deft.?)
1–12–70	Filed REPLY BRIEF OF THE PLAINTIFF, General Electric Credit Corp.

3–20–70 Filed MEMORANDUM OPINION WITH FINDS OF FACT AND CONCLUSIONS OF LAW—Judge Joe J. Fisher—COB V. 16, P. 292. Mailed Certified Copies to all attorneys and instructed counsel for Cross-Plaintiff to submit appropriate judgment within 15 days.

4–10–70 Filed JUDGMENT—Judge Joe J. Fisher—COB V. 16, P. 301.—T. R. Grubbs to recover from General Electric Credit Corp. $20,000.00 with 6% int. from this date. T. R. Grubbs' note to General Electric Credit Corp. in the amount of $66,923.47 is cancelled. T. R. Grubbs to recover nothing from General Electris Co. and USA to recover nothing from General Electric Co. or General Electric Credit Corp. General Elecri Credit Corp. to recover nothing from T. R. Grubbs, et al.

5–7–70 Filed NOTICE OF APPEAL by General Electric Credit Corp.

Copies of Notice mailed to Fifth Circuit and to all attorneys of record.

Receipt #37530 in the amount of $5.00 for Filing Appeal.

5–8–70 Filed SUPERSEDEAS BOND in the sum of $24,000.00 with Federal Ins. Co. as Surety.

6–12–70 Mailed complete file with exhibits, court reporter's transcript, cover page, index & Clerk's Certificate to the Fifth Circuit Court of Appeals. Notified them at Mr. Bloxom's request to send the file to him for printing. Notified all attorneys.

6-25-71 Received for the Fifth Circuit Court of Appeals: JUDGMENT (dated 6-2-71) Issued as Mandate 6-24-71.

Remanded to District Court, Costs to be divided between Pltf. & Deft.

OPINION—Remanded to District Court with instructions that the case be remanded to the State Court for appropriate disposition.

APPENDIX—Two Vols.

LETTER—Original File was destroyed by fire. The attorneys are to help reconstruct record if necessary. (See Bench Docket for details).

7-9-71 Received from the Fifth Circuit Court of Appeals: THE ORIGINAL EXHIBITS and BILL OF COSTS approved by Fifth Circuit.

IN THE DISTRICT COURT OF MARION COUNTY, TEXAS

GENERAL ELECTRIC CREDIT CORPORATION

vs.

T R. GRUBBS, DBA T. R. GRUBBS TIRE & APPLIANCE

PLAINTIFF'S FIRST ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now General Electric Credit Corporation, a New York Corporation, organized under the laws of the State of New York and doing business in the State of Texas out of its office in the State of Louisiana at 624 Travis Street, Shreveport, Louisiana, hereinafter called Plaintiff, complaining of T. R. Grubbs, dba T. R. Grubbs Tire & Appliance, hereinafter called Defendant who resides in Marion County, Texas, and for cause of action would show the Court as follows:

I.

That Plaintiff is a Corporation with its domicile in Shreveport, Caddo Parish, Louisiana, and is engaged in interstate commerce and that Defendant is a resident of Jefferson, Marion County, Texas.

That on or about March 12, 1964, Defendant executed and delivered to Plaintiff his promissory note, bearing date on such day and year, and thereby promised to pay Plaintiff, or its order, in monthly installments of Fifteen Hundred and No/100 Dollars ($1500.00) each, the first installment being due and payable on or about April 11, 1964, and a like installment due on or before the 11th day of each month thereafter, until said note in the amount of Sixty Six Thousand Nine Hundred Twenty-Three and 47/100 Dollars ($66,923.47) is paid in full, with No (0) interest from April 11, 1964 and ten per cent (10%) attorney's fees upon principal and interest, if placed in the hands of an attorney for collection or collected by suit, a copy of such note is attached hereto marked Exhibit "A" and made a part hereof to which reference is here made. That Defendant has paid the sum of One Thousand Five Hundred and No/100 ($1500.00) on said note and is entitled to credit therefor; that Defendant owes a balance of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), on said note and has been given credit for all just and due offsets and credits due on said note.

III.

Plaintiff, being from such date to the present date the legal owner and holder of such note, on or about the 11th day of June, 1964, after such note was due and payable, made demand of Defendant to pay the same, and Defendant, refusing, placed such note after maturity in the hands of the undersigned attorney for collection, agreeing with

him to pay him the sum of Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees for his services in connection with such note, which is a reasonable amount therefor.

IV.

Though repeated demands have been made by Plaintiff upon Defendant to pay such note, and attorney's fees, the Defendant has failed and refused, and still fails and refuses to pay the same or any part thereof, to Plaintiff's damage in the sum of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), and Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees.

V.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear herein, and that on final hearing hereof, they have judgment in the amount of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), together with Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees, for cost of suit, and for general relief.

Baldwin & Curry
By: /s/ Doyle Curry
Attorney for Plaintiff

Baldwin & Curry
Attorneys At Law
Mahon Building
Marshall, Texas

(Title Omitted)

NO. 17,791

DEFENDANT'S THIRD AMENDED ANSWER AND CROSS-ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance, Defendant in the above entitled and numbered cause, and files this his Third Amended Original Answer and Cross-Action, and for such would show the Court as follows:

I.

This Defendant denies each and every allegation set out in Plaintiff's Petition, and demands strict proof thereof.

II.

This Defendant would show the Court that there was a total failure of consideration for the execution of the note herein and upon by virtue of the facts hereinafter shown.

III.

On or about March 7, 1964, Plaintiffs then field representative H. C. Jones, requested this Defendant to meet with him and other officers of the Plaintiff at Shreveport, Louisiana, and advised Defendant that the Plaintiff's representatives wanted to go over all of his accounts in order to determine which of said accounts were in their opinion uncollectable; that in the event they found any of said accounts which they believed to be uncollectable, these would be returned to this Defendant and he could execute his note to Plaintiff in lieu of such accounts and that the accounts rejected by them would be owned by the Defendant and would be exclusively his to collect and

the money retained by him and used by him as he saw fit, or paid on the note to be executed.

IV.

Pursuant to such request this Defendant went to Shreveport on or about March 9, 1964, and met with Plaintiff's representatives, namely, H. C. Jones, Field Representative, Jim Newal, Field Representative, Howard Cole, acting Branch Manager and Frank Robinson, Assistant Regional Manager of New Orleans, Louisiana.

V.

This Defendant would show the Court that after going over Defendant's accounts, Plaintiff's representatives above named, found accounts which they claimed to be uncollectable in the amount of $66,923.47. Plaintiff's representatives then stated and agreed that if this Defendant would execute the note herein sued on, they would return these accounts to him and he could collect or renew them, and such sums so collected would belong to him to be used as he might see fit. They further agreed that the Plaintiff would continue to finance all new accounts sent it by this Defendant provided that the credit of such parties were approved and the proceeds of such financing would be paid to Defendant for use according to his discretion, thus enabling the Defendant to make the payments of the note sued upon and to pay for additional merchandise and have additional capital on which to operate.

VI.

This Defendant would show the Court that all of such representation and agreements were falsely and fraudulently made in order to induce this Defendant to execute said note, and to eventually put him out of business; that this Defendant made the first payment of $1,500.00 as pro-

vided in said note and soon thereafter sent the Plaintiff new accounts to be financed, representing approximately the sum of $2,600.00. Plaintiff first refused to accept these accounts, but after this Defendant procured credit ratings showing that the credit of persons owing such accounts to be good, Plaintiff then accepted them, but refused to send him the money. Instead, the Plaintiff, disregarding its agreement, retained the $2,600.00 and purported to credit it to Defendant's reserve account, thus preventing Defendant from using said money to make the payments on said note and to purchase new merchandise, and in fact forcing Defendant to miss the next ensuing note payment. The Plaintiff at such time advised this Defendant that it would not finance any more of his accounts.

VII.

This Defendant would further show the Court that Plaintiff in violation of its agreements and representations, failed and refused to assign the chattel mortgages securing the $66,923.47 worth of accounts, included in the note, thus preventing him from foreclosing on any of the accounts that refused to pay; that Plaintiff thereafter began to foreclose on numerous accounts of this Defendant and without regard to its agreement to let this Defendant collect the accounts for which the note was executed, began and did foreclose numerous of these accounts, taking merchandise which was covered by its agreement above set out; that Plaintiff sent out letters to all of Defendant's customers (Including the ones whose accounts had been returned to him), advising them not to make any further payments of any kind to this Defendant.

VIII.

Defendant would show the Court that many of his customers would carry two accounts with him in his business, one on merchandise sold by General Electric Company and financed by the Plaintiff General Electric Credit Corporation; the other financed by this Defendant. Most of these customers could not or did not realize that they owed two separate accounts; that Plaintiff, after refusing to finance Defendant's accounts, mailed out letters to all of his customers, including those whose accounts had been returned to and now belonged to Defendant, advising them to make no further payments to this Defendant. As a result of these letters, the Defendant's customers have refused to pay him the accounts carried by him as well as those financed by Plaintiff.

IX.

Defendant would further show the Court that in Plaintiff's scheme to bankrupt this Defendant, it refused to extend him further credit, and came and repossessed all of the merchandise which it had financed and which had not been sold; that it also notified the General Electric Company that it would no longer finance merchandise it might sell to Defendant and requested the General Electric Company to refuse to sell Defendant any more merchandise, which it did.

X.

Defendant would show the Court that Plaintiff has repudiated all of its agreements, made to induce him to execute the note herein sued on, and by its unlawful acts and conduct has put Defendant in a position where he could not pay said note; that the consideration therefore has totally failed. The execution and delivery of the note

by Defendant Grubbs was conditioned upon the Plaintiff's performance of its agreements and the truth of its representations, and said agreements and representations being untrue and not followed, said note is of no force and effect.

Respectfully submitted,

Cornelius & Cornelius
By: /s/ J. R. Cornelius
J. R. Cornelius
Attorneys for Defendant

(Title Omitted)

CROSS-ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now T. R. Grubbs, dba T. R. Grubbs Appliance, Cross-Plaintiff herein, and with leave of the Court, files this his First Amended Cross-Action, and complaining of General Electric Company, hereinafter called Defendant, and General Electric Credit Corporation, and the United States of America, hereinafter called Cross-Defendant, and for cause of action would show the Court as follows:

I.

All of the allegations and facts set out in the preceeding third amended original answer of the Defendant Grubbs, particularly those setting out the fraudulent and tortuous conduct of the Plaintiff, General Electric Corporation, are referred to and incorporated herein by refer-

ence and made a part hereof as fully as if copied verbatim in this paragraph.

II.

This Cross-Plaintiff would show the Court that the acts and conduct of the Cross-Defendant General Electric Credit Corporation, which were later joined in by the Defendant General Electric Company, constituted the beginning of an unlawful and fraudulent scheme and conspiracy to be pursued by the General Electric Company and the General Electric Credit Corporation, in putting the Defendant and Cross-Plaintiff out of business, and to destroy his reputation and good will that such conduct and those acts hereinafter shown did result in the total destruction of his business:

III.

The Cross-Plaintiff would show the Court that after General Electric Credit Corporation fraudulently put the Cross-Plaintiff T. R. Grubbs, at its mercy as is shown in the preceding answer, and after breaking its agreements with him and setting out to destroy his business, it refused to extend him further credit, and induced and procured the agreement of General Electric Company joined in the conspiracy by refusing to sell to him, and in order to further said conspiracy, the Defendant General Electric Company withdrew its franchise from this Cross-Plaintiff and gave it to another merchant in Jefferson. These acts not only prevented him from selling the merchandise of the Defendant General Electric Company, but destroyed his credit with all other firms who sold him merchandise

and put him in a position where he could not recoup his losses.

IV.

Cross-Plaintiff would show the Court that during the months of October, November, and December of 1964, General Electric Credit Corporation sent several of its representatives into his trade territory to check the accounts of his customers, and to repossess the merchandise from those who were delinquent in their payments; that among these were Jim Newal, its Field Representative, Ken McMicheal, Billy Haynes, and others whose names are unknown to Cross-Plaintiff. These representatives, while acting for Cross-Defendant in the scope of their employment told Cross-Plaintiffs' customers not to make any further payment to Mr. Grubbs; that he was keeping their money and not sending the payments to the General Electric Credit Corporation; that he had charged to them and mortgaged to General Electric Credit Corporation items of merchandise that they did not purchase. These and many other false, malicious, and slanderous accusations were made by General Electric Credit Corporation's representatives while in the scope of their employment, and with the knowledge of their branch and General Managers.

V.

Cross-Plaintiff would further show the Court that after General Electric Credit Corporation had repossessed a large quantity of merchandise from Cross-Plaintiff's customers, it stored them in a large warehouse in Jefferson and prepared to sell it without notice to this Cross-Plaintiff, even though he had endorsed the notes for such

merchandise, and would be liable for any deficiency which might occur in case the merchandise sold for less than the debt; that when Cross-Plaintiff discovered this scheme of General Electric Credit Corporation and General Electric Company, he had his attorneys demand that he be informed of the amount of the bids and to be permitted to procure some other persons who would pay for said merchandise and thereby lessen his liability. Cross-Defendant finally agreed that he could have this right on that lot of merchandise. Thereafter however, General Electric Credit Corporation again engaged in such a scheme and refused to let him know when or where such merchandise was to be sold or the persons buying the same or the price for which it was sold. This was done to create a greater deficiency and liability on this Cross-Plaintiff, and were fraudulently designed to further the purpose of General Electric Credit Corporation and General Electric Company to destroy Cross-Plaintiff's business.

VI.

Cross-Plaintiff would further show that General Electric Credit Corporation not only repossessed merchandise from some of his customers who were paying their accounts and would have continued to pay if properly handled, but they also repossessed the merchandise from many of the customers whose accounts had been returned to and were owned by Cross-Plaintiff Grubbs, and for which he had executed the note herein sued on. Therefore, repossession of such merchandise was unlawful and without any justification and amounted to a deliberate conversion of Cross-Plaintiff's property and the destruction of his collateral security. In addition to this,

they made settlement agreements with others and accepted less than full payment in full satisfaction of all the accounts of such customers, some of which accounts belonged exclusively to this Cross-Plaintiff, and in which General Electric Credit Corporation had no right whatsoever. The representatives of General Electric Credit Corporation told Cross-Plaintiff's customers that they wanted all merchandise purchased from Mr. Grubbs without any reservations, and thereby, on occasion even acquired property which the Cross-Plaintiff had financed with other companies and was not covered by the mortgage of General Electric Credit Corporation. Also, by not checking the items listed on its mortgage General Electric Credit Corporation failed to procure all of the merchandise listed on many of the mortgages, thus reducing the credit due on the account for which this Cross-Plaintiff was contingently liable, and thereby increasing his liability.

VII.

The Defendant General Electric Credit Corporation and Cross-Defendant General Electric Company, through their agents and representatives, also wrongfully and maliciously told customers of the Cross-Plaintiff Grubbs that he was not treating them fairly and honestly, and that they should take their business to a competitor of the said Grubbs, naming and designating said competitor, who was the merchant to whom said parties gave the General Electric franchise after it had been taken from the said Cross-Plaintiff Grubbs. Many of the good customers of Grubbs believed these false and malicious tales and with-

drew their business from him and stopped paying their just debts to Grubbs.

VIII.

The Cross-Defendant General Electric Credit Corporation and Defendant General Electric Company entered into and followed to completion, an unlawful, fraudulent and malicious conspiracy and agreement in restraint of trade designed and calculated to

A. Force Cross-Plaintiff into default on his note to General Electric Credit Corporation.

B. Deprive him of his lawful credit on foreclosed merchandise.

C. Increase his liability on the accounts financed with General Electric Credit Corporation.

D. Force him into insolvency and destroy his business and good will.

E. Unlawfully convert his property and items on which he had a lien, to their own use.

F. Unlawfully convert to their own use, merchandise which was financed by other companies and mortgaged to them, thus destroying the relationship between Grubbs and said other financing companies and preventing Grubbs from obtaining credit and financing.

G. Deny Grubbs both credit for financing merchandise and also the supply of General Electric appliances, and deliver both to a competitor.

H. By false, malicious and slanderous statements, coupled with the fraudulent and illegal acts above

set out, to destroy the confidence of all those dealing with Grubbs; customers as well as suppliers and financing companies, so that Grubbs could not obtain the money or help to stay in business.

I. By false and slanderous attacks upon Grubbs' honesty, to ruin his reputation.

J. Caused him to be unable to pay his accounts with the suppliers and companies and subjected him to approximately $25,000.00 worth of judgments.

IX.

The wrongful and unlawful acts, combinations and conspiracies perpetrated by the Cross-Defendants and specified herein, were violations of the Anti-Trust Laws of the United States and particularly Title, 15, U.S.C. and particularly sections 1, 2, 3 et seq. and 15 et seq. thereof, as well as violations of the Anti-Trust Laws of the State of Texas and constituted illegal conspiracies, acts and agreements in restraint of trade and to monopolize trade and business in the area served by Cross-Plaintiff and to force Cross-Plaintiff out of business and to destroy his trade and good will, and because of such unlawful acts the Cross-Defendants have become liable to Cross-Plaintiff for treble damage as hereinafter alleged and as authorized by Sec. 15, Title 15, U.S.C.

X.

By reason of the illegal and wrongful conduct of the Cross-Defendants, Cross-Plaintiff has been compelled to employ and engage attorneys to assist him in the protection of his legal rights and the recovery of his rightful remedies and damages, and pursuant to Sec. 15, Title 15,

U.S.C. the Cross-Defendants should be compelled to pay Cross-Plaintiff reasonable attorney's fees. The Cross-Plaintiff has employed the undersigned attorneys to represent him hereinafter specified.

XI.

Cross-Plaintiff would show the Court that because of the acts and conduct of the Cross-Defendant, General Electric Credit Corporation and General Electric Company, including the withdrawal of his credit and cancellation of his Dealers Franchise, and the derogative untrue statements made about him he was unable to pay his creditors. He thereby suffered the following judgments to be taken against him to-wit:

The Lee Hardware Co.	2/15/1966	2/18/1966
vs.		
T. R. Grubbs	$383.93	
General Electric Supply Co.	2/15/1966	2/17/1966
vs.		
T. R. Grubbs	$662.98	
E. A. Credit Co.	2/15/1966	2/17/1966
vs.		
T. R. Grubbs	$387.23	
Southwest Factoring Corp.	2/16/1966	2/15/1966
vs.		
T. R. Grubbs	$334.70	
Higginbotham Pearlstone Hardware	3/21/1966	3/22/1966
vs.		
T. R. Grubbs	$1,116.68	

Carver Chair Co. Inc.	4/20/1966	10/19/1966
vs.		
T. R. Grubbs	$304.60	
Cullum & Boren Co.		10/19/1966
vs.		
T. R. Grubbs	$162.09	
U.S. of America	7/1/1966	7/7/1966
vs.		
Thomas Rayford Grubbs	$6,935.78	
Goodyear Tire & Rubber Co.	12/13/1966	12/16/1966
vs.		
Thomas R. Grubbs	$6,500.00	

Cross-Plaintiff is therefore in jeopardy because of the adverse claims being pressed by the lien claimants and the United States of America, and the said Cross-Plaintiff prays that an application be made determining the priority of the judgment lien claimed by the United States of America so as to avoid double or multiple liability as provided by Rule 22 of the U. S. Rules of Civil Procedure.

XII.

Cross-Plaintiff would show the Court that heretofore on September 15, 1962, he executed his one promissory note to the First State Bank, Hallsville, Texas, in the principal sum of $20,000.00, which said note was thereafter transferred and assigned to Small Business Administration, Marshall, Texas; that said note provided for monthly payments of $380.00 each, including both principal and interest and the balance due of the principal and interest five years from date thereof; this Cross-Plaintiff made all of said payments except a balance of $6,823.30 of the principal thereof; that because the matters hereinabove set out and the unlawful

acts of the Cross-Defendants General Electric Credit Corporation and General Electric Company, he was unable to pay the balance of said note; that thereafter on May 25, 1966, the United States of America filed suit in the United States District Court for the Eastern District of Texas, Marshall Division, in Cause No. 1126 on the docket thereof.

XIII.

Cross-Plaintiff would show the Court that thereafter on June 16, 1966, the United States of America procured a judgment against this Cross-Plaintiff in the sum of $6,935.87 and $42.32 Court cost, together with interest thereon at the rate of 6% per annum from date; that thereafter on July 7, 1966, an abstract of said judgment was filed and recorded in Volume 4 at page 98 of the Abstract Judgment Records of Marion County, Texas.

All of the judgments above mentioned except the judgment in favor of Goodyear Tire and Rubber Co., were dated, filed and recorded prior to the judgment obtained by the United States of America. The United States of America is claiming and maintaining that, even though its judgment was dated and filed subsequent to the others above stated, it is never the less superior to the judgments listed; that in the event he should recover herein and be able to pay said judgments, he would not be able to do so without becoming liable to the other judgment creditors.

XIV.

As a direct result of the unlawful conspiracy, as well as the joint and several torts and wrongs committed by General Electric Credit Corporation and General Electric Company against the Cross-Plaintiff Grubbs, the wrongful purposes of said tortfeasors have been largely realized. His business was destroyed. His ability to purchase and finance

merchandise has been severely damaged. His reputation and good will have been seriously and irreparably damaged, and he was denied the opportunity to recoup his losses and pay his obligations. Because of these injuries, Cross-Plaintiff has been actually damaged in the sum of $150,000.00 for the destruction of his business. Because of the vicious, fraudulent and malicious torts of the General Electric Credit Corporation and General Electric Company, and their illegal conspiracy to destroy Cross-Plaintiff's business, they are liable under the Federal Statutes as well as the Texas Statutes, to treble damages in the sum of $450,000.00 for which Cross-Plaintiff respectfully prays.

A. He has been actually damaged in the sum of $50,000.00 for damage to his reputation and good will and standing in the community. In addition, and in the alternative and the event that Cross-Plaintiff be mistaken in saying that he is entitled to treble damages for the conspiracy engaged in by the Defendant and the Cross-Defendant, then Cross-Plaintiff says that in addition to the actual damages of $150,000.00 for loss of his business and $50,000.00 for damages to his reputation, the Cross-Plaintiff is entitled to exemplary and punitive damages in the sum of $450,000.00 for which he prays.

WHEREFORE, PREMISES CONSIDERED, Cross-Plaintiff prays that General Electric Company be cited to appear and answer herein and that the United States be cited by service upon the Hon. Ramsey Clark, U. S. ATTORNEY GENERAL, and upon Hon. Wayne Justice, U. S. Attorney, Tyler, Texas, for the Eastern District of Texas, and that on final hearing hereof, Cross-Plaintiff have judgment against General Electric Credit Corporation and General Electric Company jointly and severally, for cancellation of the note sued on, and for actual and treble damages as above set out and for exemplary damages and for attorney's fees and Court costs and deterioration as to

priority of liens and for such other and further relief as he may show himself to be entitled.

Respectfully submitted,

Cornelius & Cornelius
By /s/ J. R. Cornelius
J. R. Cornelius
Attorneys for Defendant and Cross-Plaintiff.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

NOTICE OF FILING PETITION FOR REMOVAL

(Filed February 2, 1968)

TO: Mrs. Nettie Mae Lemmon, Clerk of the 7th. Judicial District Court of Marion County, Texas:

NOTICE IS HEREBY GIVEN, pursuant to the Acts of Congress in such cases made and provided, that the Defendant, UNITED STATES OF AMERICA, in Case No. 17,791 on the Docket of the 76th. Judicial District Court of Marion County, Texas, styled GENERAL ELECTRIC CREDIT CORPORATION Vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, has filed its

Petition for Removal of said cause to the United States District Court, Eastern District of Texas, Marshall Division, and herewith tenders for filing in the 76th. Judicial District Court of Marion County, Texas, a copy of the Petition for Removal heretofore filed in the United States District Court. Said Petition is filed without bond in accordance with the provisions of Section 1446(b), Title 28, United States Code.

By a copy of this Notice and a copy of the Petition, we are hereby notifying Cornelius & Cornelius, Attorneys at Law, 123 North Polk, Jefferson, Texas, attorneys for Defendant and Cross Plaintiff, and Mr. Hubert D. Johnson, Attorney at Law, 1900 Mercantile Dallas Building, Dallas, Texas, Attorney for General Electric Credit Corporation, Plaintiff herein, and Mr. Morris Harrell, Attorney at Law, 4200 Republic National Bank, Dallas, Texas, Attorney for General Electric Company, that said Petition has been filed and that you are hereby requested to forward all papers and matters in this cause of action to the Clerk of the United States District Court, Eastern District of Texas, Marshall Division, Marshall, Texas, with your certificate of transcript of the State Court proceedings.

Wm. Wayne Justice
United States Attorney
By: /s/ Carl Roth
Carl Roth
Assistant U. S. Attorney

PETITION FOR REMOVAL

(Filed February 20, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

THE UNITED STATES OF AMERICA, on behalf of its agency and instrumentality, THE SMALL BUSINESS ADMINISTRATION, acting by and through its Attorney, Wm. Wayne Justice, United States Attorney for the Eastern District of Texas, would respectfully show as follows:

I.

The above entitled suit was instituted in the 76th Judicial District Court in and for Marion County, Texas, and is now pending therein.

II.

By reason of the Third Amended Answer and Cross Action filed by the Defendant, T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, it is sought to have a determination by the State District Court that the judgment lien claimed by the United States as a result of the Judgment in the amount of Six Thousand Nine Hundred Thirty Five and 78/100 ($6,935.78) Dollars in the case of The United States of America Vs. Thomas Rayford Grubbs, Civil No. 1126, Marshall Division, is junior to and must take a lesser priority to the adverse claims being pressed by certain other lien claimants against the Defendant Grubbs.

III.

A claim in the nature of a suit requesting the determination of the priority of liens against property in which the United States asserts an interest is cognizable under Section 2410(a), Title 28, United States Code, and thus said action is one in which the District Courts of the United States are given original jurisdiction.

IV.

The Amended Pleading by which the United States became a party Defendant in the above captioned suit was served upon the United States Attorney on January 19, 1968. Attached hereto are copies of the Defendant Grubbs' Third Amended Answer and Cross Action setting forth the claim for relief upon which said action is based with regard to the Defendant, United States of America.

WHEREFORE, the Petitioner, UNITED STATES OF AMERICA, prays that said action be removed from the State Court into this Court for trial and determination upon the merits of all issues or claims therein, as is provided by Title 28, Section 1444, 1441(c) and 1446.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: Carl Roth
Assistant U. S. Attorney

THE STATE OF TEXAS)
)
COUNTY OF JEFFERSON)

CARL ROTH, being first duly sworn, deposes and says: That he is an Assistant United States Attorney and as such is authorized to make this verification on behalf of Petitioner, United States of America; that affiant has read the foregoing petition and knows the contents thereof, and the same are true of his own knowledge except the allegations therein made upon information and belief, and as to such allegations affiant believes it to be true.

Carl Roth

SUBSCRIBED AND SWORN TO BEFORE ME, this the ..... day of February, 1968.

.....

Notary Public in and for the County of Jefferson, State of Texas.

My Commission Expires June 1, 1969.

(Certificate of Service omitted in printing)

(Certificate of Authentication omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,

Plaintiff,

vs.

T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,

Defendant.

Civil Action No. 1273

THIRD PARTY DEFENDANT'S, UNITED STATES OF AMERICA, ANSWER AND CROSS ACTION

(Filed March 22, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE UNITED STATES OF AMERICA, acting by and through its Attorney, WM. WAYNE JUSTICE, United States Attorney for the Eastern District of Texas, and files this its Answer to the Defendant's, T. R. GRUBBS, Cross Action, and would respectfully show the Court as follows:

I.

The Third Party Defendant, UNITED STATES OF AMERICA, denies generally each and every allegation of the Defendant's, T. R. GRUBBS, Cross Action in this case.

II.

The Third Party Defendant, UNITED STATES OF AMERICA, specifically denies that any party to this action has any lien or claim superior or paramount to that of this Third Party Defendant.

III.

The Third Party Defendant, UNITED STATES OF AMERICA, alleges and contends and would show the Court that it has a prior and superior claim against any and all assets or property presently in the possession of T. R. GRUBBS, or which he might acquire in the future, by virtue of the Judgment in favor of the United States of America against said T. R. GRUBBS in Civil Action No. 1126, Marshall Division, United States District Court for The Eastern District of Texas; said Judgment was obtained June 16, 1966, in the amount of $6,935.87, plus interest thereon at the rate of 6% per annum from the date of Judgment until paid, in addition to Court Costs in the amount of $42.32. An Abstract of said Judgment has been duly filed of record in Volume 4, Page 98 of the Judgment Records of Marion County, Texas.

IV.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts further that demand has been made upon the Defendant T. R. GRUBBS for payment of the Judgment set out above, and that the amounts set forth in the preceding paragraph have not been paid and presently remain due and owing to the UNITED STATES OF AMERICA.

V.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts and contends that the judgment lien described in the preceding paragraph No. III constitutes a prior, paramount, and superior lien as against all assets or property presently in the possession of the Defendant T. R. GRUBBS; or which he may acquire in the future, as against all other claims or liens asserted by other parties to this proceeding.

WHEREFORE, all premises considered, the Third Party Defendant, UNITED STATES OF AMERICA, prays that on final hearing herein the indebtedness owed to the UNITED STATES OF AMERICA under and by virtue of the judgment lien set forth in the preceding Paragraph No. III. be declared prior, superior and paramount to any and all interests or claims asserted by other parties to this action, and further by way of affirmative relief, the Third Party Defendant, UNITED STATES OF AMERICA prays that it be granted judgment foreclosing this lien as set out herein as against all other parties to this action, and the Third Party Defendant, UNITED STATES OF AMERICA, further prays for such other relief, at law or in equity, as the Court may determine this Defendant to be entitled and for costs in this behalf expended..

CROSS ACTION

COMES NOW THE UNITED STATES OF AMERICA, pursuant to the provisions of Rule 13(g) of the Federal Rules of Civil Procedure, and brings this Cross Action against the Plaintiff, GENERAL ELECTRIC CREDIT CORPORATION and the Third Party Defendant, GENERAL ELECTRIC COMPANY, and for cause of action would show the Court as follows:

I.

That on or about September 15, 1962, T. R. GRUBBS dba T. R. GRUBBS TIRE & APPLIANCE, executed and delivered to the First State Bank of Hallsville, Texas a promissory note in the amount of $20,000.00, which note was subsequently transferred and assigned to the Small Business Administration, an agency and instrumentality of The United States of America, by the said First State Bank of Hallsville, Texas. , A true copy of said Note is attached hereto, marked "EXHIBIT A", and by reference

made a part hereof. The performance of the debtor Grubbs under the terms of this note was satisfactory and the account was in good standing at all times prior to May 1, 1965.

II.

The said T. R. GRUBBS defaulted on his installment payments in May, 1965 on said promissory note, and no further payments have been made to this date. On June 16, 1966, Judgment was obtained against THOMAS RAYFORD GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, for the balance due and owing on that date on said note in the amount of $6,935.87, plus interest at the rate of 6% per annum from the date of Judgment until paid.

III.

The non-performance and default of T. R. GRUBBS with respect to his duty and obligation to pay according to the terms of the promissory note described above were directly induced and caused by certain intentional acts of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, or their agents and employees, to wit:

(1) Beginning the latter part of 1964 GENERAL ELECTRIC CREDIT CORPORATION sent several representatives into the trade territory of T. R. GRUBBS to check on his accounts and repossess merchandise from those customers who were delinquent in their installment payments. Said representatives in the course of their employment made false, malicious and slanderous statements about Grubbs to various persons, the effect of which was to destroy the confidence of numerous customers, suppliers and financial institutions with respect to their business relationship with Grubbs.

(2) The agents and employees of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION did further unlawfully convert various merchandise and items of property in which Grubbs had a lien interest to their own use or that of said Cross Defendant.

(3) That the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION engaged in a course of conduct generally intended to destroy the reputation and good will of the business of T. R. GRUBBS.

(4) Cross Defendant's, GENERAL ELECTRIC CREDIT CORPORATION, refusal to honor its agreements to extend Grubbs credit also prohibited him from stocking sufficient merchandise to carry on his business operations on a profitable basis.

(5) Cross Defendant's, GENERAL ELECTRIC COMPANY, acting in concert with GENERAL ELECTRIC CREDIT CORPORATION by withdrawing its franchise and refusing to sell additional merchandise to Grubbs, further prohibited him from carrying on his business operations on a profitable basis.

IV.

By reason of the acts set forth in the preceding paragraph, the Cross Defendants intentionally and without just cause or lawful right interfered with the right of the United States to performance on the part of T. R. GRUBBS in accordance with the terms of his promissory note. As a direct result of said acts, Grubbs was prevented from performing on his contract with the United States of America and as a result has defaulted in the payment of said promissory note causing the United States of America to incur actual damages in the amount of $6,935.97 plus interest at the rate of 6% per annum from June 16, 1966 until paid, in addition to Court Costs in the amount of $42.32.

V.

The said Cross Defendants were maliciously motivated and induced the default breach on the part of Grubbs through aggravated, fraudulent and oppressive methods, sufficient to justify the imposition of punitive damages.

WHEREFORE, PREMISES CONSIDERED, the Third Party Defendant and Cross Plaintiff, UNITED STATES OF AMERICA, prays that on final hearing herein Judgment be entered declaring that the Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, have wrongfully and maliciously interfered with the performance of T. R. GRUBBS upon his contractual relationship with the UNITED STATES OF AMERICA; that Judgment be entered finding Cross Defendants jointly and severally liable for actual damages to the UNITED STATES OF AMERICA in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966, until paid, in addition to Court Costs in the amount of $42.32; and further that Judgment be entered requiring the Cross Defendants liable jointly and severally for the amount of $10,000.00 as punitive damages herein, and for such other and further relief at law or in equity as the Court may determine this Third

Party Defendant to be entitled, and for costs in this behalf expended.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: /s/ Carl Roth
Carl Roth
Assistant U. S. Attorney
P. O. Box 1510
Beaumont, Texas 77704
Attorneys for Third Party Defendant, United States of America

(Certificate of Service omitted in printing)

Exhibit A

NOTE

SBLP-296,574-MAR
Jefferson, Texas
(City and State)
(Date) September 15, 1962.

$20,000.00

For value received, Thomas Rayford Grubbs, dba T. R. Grubbs Tire & Appliance (hereinafter called "Undersigned"), promises to pay to the order of The First State Bank (hereinafter called "Holder"), at its banking house in the city of Hallsville, Texas, State of ....., or at Holder's option, at such other place as may be designated from time to time by the Holder, the sum of (Write out amount) Twenty Thousand and No/100 - - - - dollars with interest on the unpaid principal computed from the date of each advance to the Undersigned at the rate of 6 percent per annum* (on 25% of the loan and 4 percent per annum on

*To be filled in only on Immediate Participation loans.

75% of the loan) payment to be made in installments as follows: In the amount of $380 each, payable monthly, including principal and interest, beginning two (2) months from date of Note, and the balance of principal and interest payable five (5) years from date of Note; with the further provision that each said installment shall be applied first to interest accrued to the date of receipt of said installment, and the balance, if any, to principal. Payment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty.

Affirmative Covenants.— The Undersigned covenants and agrees that, until the payment in full of the moneys owing on this Note, the Undersigned will:

1. (a) Keep proper books of account in manner satisfactory to Holder; (b) Authorize at Undersigned's expense inspection and audits by Holder of any books, records and papers in the custody or control of Undersigned or others, relating to Undersigned's financial or business conditions, including the making of copies thereof and abstracts therefrom and inspection and appraisal of any of Undersigned's assets.

2. Deliver to Holder hereof within 45 days after the end of each fiscal annual period, a balance sheet of the Undersigned as of such date and a profit and loss statement of the Undersigned for such fiscal period, in form satisfactory to the Holder hereof;

3. Deliver to Holder hereof with reasonable promptness such other financial data at such times and in such form as Holder may request;

4. Pay all taxes, assessments and other governmental charges to which the Undersigned, or the property of the Undersigned, is or shall be subject before such charges become delinquent, except that no such charge need be paid so long as its validity or amount shall be contested in good faith by appropriate proceedings and the Undersigned shall have set up on the books of the Undersigned such reserve with respect thereto as shall be required by sound accounting practices;

5. Keep all of the real and tangible personal property of the Undersigned insured in such amounts and against such risks as may be satisfactory to the Holder or as are commonly insured against in the same areas by owners of similar property, and maintain in force policies of insurance, satisfactory to Holder, against liability for damage to persons or property and under all applicable workmen's compensation laws;

6. Use the proceeds of the loan solely for the purposes approved in the Authorization for the Loan issued to Bank by Small Business Administration (hereinafter called "SBA").

7. On demand, reimburse Holder and SBA, respectively, for any and all expenses incurred, or which may be hereafter incurred by Holder or SBA from time to time in connection with or by reason of borrower's application for, and the making and administration of, the loan.

8. Compensation. - - Borrower will limit the total annual compensation (including salaries, withdrawals, fees, bonuses, commissions, drawing accounts and other payments whether direct or indirect, in

money, or otherwise) of all officers, stockholders, directors, partners, proprietors or others named herein to the following named persons in the amount set opposite each respective name:

Name	Position	Amount

and, if permitted by the Authorization or by Holder, such additional amount to each said party as may be necessary to pay his income taxes on said compensation computed on the basis that such compensation is his only income, provided that such additional amount shall not exceed the net tax payable by each said party. Borrower, if a corporation, may, upon prior written notice to Bank of its intention so to do, accrue on its books or pay additional compensation to any person named herein provided that, if paid, such additional compensation is immediately loaned to Borrower by such person for the use of Borrower until the Loan is paid in full.

Negative Covenants.— The Undersigned covenants and agrees that, without the prior written consent of the Holder hereof, the Undersigned will not:

1. Create, assume or otherwise suffer to exist any mortgage, pledge or other incumbrance upon any of the real or tangible personal property of the Undersigned, whether now owned or hereafter acquired, except (a) liens for taxes or other governmental charges not delinquent or being contested in good faith, or (b) purchase money liens upon property acquired after the date of the Note, and other liens upon such property at the time of the acquisition thereof.

2. (a) If Undersigned is a corporation, declare or pay any dividend or make any distribution upon its capital stock, or purchase or retire any of its capital stock, or consolidate or merge with any other company, or make any advance, directly or indirectly, by way of loan, gift, bonus, commission, or otherwise, to any company directly or indirectly controlling or affiliated with or controlled by Undersigned, or to any officer, director, or employee of Undersigned, or of any such company, (b) if, Unsigned is a partnership or individual, make any distribution of assets of the business of Undersigned, other than reasonable compensation for services, or make any advance, directly or indirectly, by way of loan, gift, bonus, commission, or otherwise, to any partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Undersigned.

Events of Default. The indebtedness (including principal, interest and expenses) shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Undersigned or for any of its property, or upon the filing of a petition by or against the Undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Undersigned of an assignment for the benefit of its creditors. Holder is authorized to declare all or any part of the indebtedness immediately due and payable upon the happening of any of the following events: (1) Failure to pay any part of the indebtedness when due; (2) nonperformance by the Undersigned of any agreement with, or any condi-

tion imposed by Holder or SBA, or either of them, with respect to the indebtedness; (3) Holder's discovery of the Undersigned's failure in any application of the Undersigned to Holder or SBA to disclose any fact deemed by Holder to be material or of the making therein or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the indebtedness, or of any misrepresentation by, on behalf of, or for the benefit of the Undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Act of 1898, as amended) or merger or consolidation of the Undersigned (or the making of any agreement therefor) without the prior written consent of Holder; (5) the Undersigned's failure duly to account, to Holder's satisfaction, at such time or times as Holder may require, for any of the collateral, or proceeds thereof, coming into the control of the Undersigned; or (6) the institution of any suit affecting the Undersigned deemed by Holder to affect adversely its interest hereunder in the collateral or otherwise. Holder's failure to exercise any of its rights under this paragraph shall not constitute a waiver thereof.

Upon nonpayment of interest or any installment of principal when due, the Undersigned and sureties authorize the Holder to sell, at public or private sale, any or all collateral deposited and property pledged to secure the payment of this Note, and apply the proceeds of sale, less expense, to the payment of this Note.

The security rights of Holder and its assigns hereunder shall not be impaired by any indulgence, release, renewal, extension, or modification which Holder may grant with respect to the indebtedness or any part thereof,

or in respect to the collateral or in respect to any endorser, guarantor, or surety without notice or consent of the Undersigned or any endorser, guarantor or surety.

Thomas Rayford Grubbs, dba
T. R. Grubbs Tire & Appliance
s/ Thomas Rayford Grubbs

I/We hereby guarantee payment of this Note:

.....

..... (If guaranty is required in a loan over $50,000, Bank shall obtain guaranty on SBA Form 148A.)

Note.—Corporate applicants or guarantors must execute Note, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants or guarantors must execute Note at least in firm name, together with signature of a general partner.

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

MOTION FOR CONTINUANCE

(Filed June 12, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff and Cross-Defendant General Electric Credit Corporation and Cross-Defendant General Electric Company move the court for a continuance of this cause and the trial thereof to the next term of this court, and as grounds for this motion said Movants make representations as follows:

1. The scope of this cause was materially increased by the filing of the Answer and Cross-Action of the United States of America on or about March 20, 1968. In response to such pleading of the United States of America, General Electric Credit Corporation and General Electric Company filed motions which have not been ruled on to date. The motion of General Electric Credit Corporation pointed out the need of additional parties, and in reply to that point the United States of America stated that it would not oppose the relief involving the joining of other parties under Rule 21.

2. With respect to the motions relating to the dismissal of the Cross-Action of the United States of America the latter has filed on or about May 17, 1968, a motion for leave to amend this pleading to set forth facts which are apparently deemed to be needed to state a legal basis for complaint.

3. The attorneys of record for the United States of America and for T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance have indicated that they are not opposed to the granting of this motion for continuance and the entry of an order continuing this cause until the next term of this court.

DATED at Dallas, Texas, this 11th day of June, 1968.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of Carrington, Johnson & Stephens
1900 Mercantile Dallas Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric Credit Corporation

/s/ Morris Harrell
Morris Harrell
Of Rain, Harrell & Emery
4200 Republic National Bank Tower
Dallas, Texas 75201 RI 2-1021
Attorneys for General Electric Company

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

ORDER FOR CONTINUANCE

(Filed June 13, 1968)

The Court having considered the Motion for Continuance filed herein by General Electric Credit Corporation and General Electric Company, and being satisfied that the same should be granted, it is hereby ordered that this cause be and the same is hereby continued to the next term of this Court.

ENTERED this the 13th day of June, 1968.

/s/ Joe J. Fisher
United States District Judge

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.
} Civil Action No. 1273

ORDER ADDING PARTIES DEFENDANT

(Filed June 20, 1968)

This cause came on for hearing on the Motion of Plaintiff General Electric Credit Corporation for an order making as additional parties herein the following:

The Lee Hardware Co.
E. A. Credit Co.
Southwest Factoring Corp.
Higginbotham Pearlstone Hardware
Carver Chair Co., Inc.
Cullum & Boren Co.
Goodyear Tire & Rubber Co.

And it appearing to the Court that said parties are necessary parties defendant and that they can be served with summons and are subject to the venue of this Court and that such joinder will not deprive this Court of jurisdiction:

IT IS, THEREFORE, ORDERED that said The Lee Hardware Co., E. A. Credit Co., Southwest Factoring Corp., Higginbotham Pearlstone Hardware, Carver Chair Co., Inc., Cullum & Boren Co., and Goodyear Tire & Rubber

Co., be named parties defendant to this action and that Defendant T. R. Grubbs and Third Party Defendant United States of America shall amend their pleadings accordingly and serve copies of their amended pleadings together with a summons and a copy of this order on said additional parties named within 15 days after the entry of this order.

ENTERED this the 6th day of June, 1968.

/s/ Joe J. Fisher
United States District Judge

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

AMENDED ANSWER AND CROSS ACTION OF THE UNITED STATES OF AMERICA

(Filed June 20, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE UNITED STATES OF AMERICA, acting by and through its Attorney, WM. WAYNE JUSTICE, United States Attorney for the Eastern District of Texas, and files this its Amended Answer and Cross Action to the Defendant's T. R. GRUBBS, Cross Action, and would respectfully show the Court as follows:

I.

The Third Party Defendant, UNITED STATES OF AMERICA, denies generally each and every allegation of the Defendant's, T. R. GRUBBS, Cross Action in this case.

II.

The Third Party Defendant, UNITED STATES OF AMERICA, specifically denies that any party to this action has any lien or claim superior or paramount to that of this Third Party Defendant.

III.

The Third Party Defendant, UNITED STATES OF AMERICA, alleges and contends and would show the Court that it has a prior and superior claim against any and all assets or property presently in the possession of T. R. GRUBBS, or which he might acquire in the future, by virtue of the Judgment in favor of the United States of America against said T. R. GRUBBS in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, said Judgment was obtained June 16, 1966, in the amount of $6,935.87, plus interest thereon at the rate of 6% per annum from the date of Judgment until paid, in addition to Court Costs in the amount of $42.32. An Abstract of said Judgment has been duly filed of record in Volume 4, Page 98 of the Judgment Records of Marion County, Texas.

IV.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts further that demand has been made upon the Defendant T. R. GRUBBS for payment of the Judgment set out above, and that the amounts set forth

in the preceding paragraph have not been paid and presently remain due and owing to the UNITED STATES OF AMERICA.

V.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts and contends that the judgment lien described in the preceding paragraph No. III constitutes a prior, paramount, and superior lien as against all assets or property presently in the possession of the Defendant T. R. GRUBBS, or which he may acquire in the future, as against all other claims or liens asserted by other parties to this proceeding.

WHEREFORE, all premises considered, the Third Party Defendant, UNITED STATES OF AMERICA, prays that on final hearing herein the indebtedness owed to the UNITED STATES OF AMERICA under and by virtue of the judgment lien set forth in the preceding Paragraph No. III. be declared prior, superior and paramount to any and all interests or claims asserted by other parties to this action, and further by way of affirmative relief, the Third Party Defendant, UNITED STATES OF AMERICA prays that it be granted judgment foreclosing this lien as set out herein as against all other parties to this action, and the Third Party Defendant, UNITED STATES OF AMERICA, further prays for such other relief, at law or in equity, as the Court may determine this Defendant to be entitled and for costs in this behalf expended.

CROSS ACTION

COMES NOW THE UNITED STATES OF AMERICA, pursuant to the provisions of Rule 13(g) of the Federal Rules of Civil Procedure, and brings this Cross Action against the Plaintiff, GENERAL ELECTRIC CREDIT CORPORATION and the Third Party Defendant, GENERAL ELECTRIC COMPANY, and for cause of action would show the Court as follows:

I.

That on or about September 15, 1962, T. R. GRUBBS dba T. R. GRUBBS TIRE & APPLIANCE, executed and delivered to the First State Bank of Hallsville, Texas, a promissory note in the amount of $20,000.00, which note was subsequently transferred and assigned to the Small Business Administration, an agency and instrumentality of the United States of America, by the Said First State Bank of Hallsville, Texas. A true copy of said Note is attached hereto, marked "EXHIBIT A", and by reference made a part hereof. The performance of the debtor Grubbs under the terms of this note was satisfactory and the account was in good standing at all times prior to May 1, 1965.

The Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, had actual and constructive knowledge of the existence of this contractual obligation through their agents and employees in their respective local or field offices prior to the Cross Defendants embarking upon the course of conduct complained of hereafter.

II.

The said T. R. GRUBBS defaulted on his installment payments in May, 1965 on said promissory note, and no further payments have been made to this date. On June

16, 1966, Judgment was obtained against THOMAS RAYFORD GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, for the balance due and owing on that date on said note in the amount of $6,935.87, plus interest at the rate of 6% per annum from the date of Judgment until paid.

III.

The non-performance and default of T. R. GRUBBS with respect to his duty and obligation to pay according to the terms of the promissory note described above were directly induced and caused by certain intentional acts of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, or their agents and employees, to wit:

(1) Beginning the latter part of 1964 GENERAL ELECTRIC CREDIT CORPORATION sent several representatives into the trade territory of T. R. GRUBBS to check on his accounts and repossess merchandise from those customers who were delinquent in their installment payments. Said representatives in the course of their employment made false, malicious and slanderous statements about Grubbs to various persons, the effect of which was to destroy the confidence of numerous customers, suppliers and financial institutions with respect to their business relationship with Grubbs.

(2) The agents and employees of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION did further unlawfully convert various merchandise and items of property in which Grubbs had a lien interest to their own use or that of said Cross Defendant.

(3) That the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION engaged in a course of conduct generally intended to destroy the reputation and good will of the business of T. R. GRUBBS.

(4) Cross Defendant's, GENERAL ELECTRIC CREDIT CORPORATION, refusal to honor its agreements to extend Grubbs credit also prohibited him from stocking sufficient merchandise to carry on his business operations on a profitable basis.

(5) Cross Defendant's, GENERAL ELECTRIC COMPANY, acting in concert with GENERAL ELECTRIC CREDIT CORPORATION by withdrawing its franchise and refusing to sell additional merchandise to Grubbs, further prohibited him from carrying on his business operations on a profitable basis.

IV.

By reason of the acts set forth in the preceding paragraph, the Cross Defendants intentionally and without just cause or lawful right interfered with the right of the United States to performance on the part of T. R. Grubbs in accordance with the terms of his promissory note. As as direct result of said acts, Grubbs was prevented from performing on his contract with the United States of America and as a result has defaulted in the payment of said promissory note causing the United States of America to incur actual damages in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966 until paid, in addition to Court Costs in the amount of $42.32.

V.

The said Cross Defendants were maliciously motivated and induced the default breach on the part of Grubbs

through aggravated, fraudulent and oppressive methods, sufficient to justify the imposition of punitive damages.

WHEREFORE, PREMISES CONSIDERED, the Third Party Defendant and Cross Plaintiff, UNITED STATES OF AMERICA, prays that on final hearing herein Judgment be entered declaring that the Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, have wrongfully and maliciously interfered with the performance of T. R. GRUBBS upon his contractual relationship with the UNITED STATES OF AMERICA: that Judgment be entered finding Cross Defendants jointly and severally liable for actual damages to the UNITED STATES OF AMERICA in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966, until paid, in addition to Court Costs in the amount of $42.34; and further that Judgment be entered requiring the Cross Defendants liable jointly and severally for the amount of $10,000.00 as punitive damages herein, and for such other and further relief at law or in equity as the Court may determine this Third Party Defendant to be entitled, and for costs in this behalf expended.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: Carl Roth
Assistant U. S. Attorney
P. O. Box 1510
Beaumont, Texas 77704
Attorneys for Third Party
Defendant, United States of
America

(Certificate of Service omitted in printing.)

Exhibit A

Exhibit A is identical to the Exhibit A found on page 36 of this appendix.

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

ORIGINAL ANSWER OF GENERAL ELECTRIC CREDIT CORPORATION TO THE AMENDED ANSWER AND CROSS-ACTION OF THE UNITED STATES OF AMERICA

(Filed July 1, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now General Electric Credit Corporation and files this its Original Answer to the Amended Answer and Cross-Action of the United States of America filed herein, and for such Original Answer said General Electric Credit Corporation would respectfully show the Court:

1. Regarding the matters set forth in Paragraphs I through V of the said Answer of the United States of America relating to the alleged prior judgment lien held by the United States of America, General Electric Credit Corporation says that it is not involved in that phase of the controversy in view of the fact that it does not hold

or claim to hold a judgment lien against any of the property of said T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance.

2. Replying to the first unnumbered paragraph of Paragraph I of said Cross-Action of the United States of America, General Electric Credit Corporation says that it does not have sufficient knowledge or information to either admit or deny such allegations of fact.

3. Replying to the second unnumbered paragraph of Paragraph I of said Cross-Action, General Electric Credit Corporation denies the said allegations regarding its alleged actual and constructive knowledge as alleged.

4. Replying to the allegations contained in Paragraph II of said Cross-Action, General Electric Credit Corporation says that it does not have knowledge or information sufficient to either admit or deny such allegations of fact.

5. Replying to the allegations contained in Paragraph III of said Cross-Action, General Electric Credit Corporation denies all such allegations except to the extent shown more fully hereinafter in this paragraph. General Electric Credit Corporation admits that it did check on accounts that had been assigned to it and did make some repossessions of merchandise of accounts assigned to it, but denies that it made any false, malicious and slanderous statements as alleged. It denies that it or any of its agents or employees unlawfully converted any merchandise or property in which the said Grubbs had a lien interest. It denies that it engaged in any course of conduct intended to destroy the reputation and good will of T. R. Grubbs. It denies that it was obligated to extend the said Grubbs any credit. It denies that it acted in concert with General Electric Company in connection with any franchise withdrawal or refusal to sell additional merchandise to the said Grubbs.

6. Replying to the allegations contained in Paragraph IV of said Cross-Action, General Electric Credit Corporation denies all such allegations.

7. Replying to the allegations contained in Paragraph V of said Cross-Action, General Electric Credit Corporation denies such allegations.

8. Answering further and without waiving any of the foregoing, General Electric Credit Corporation says that any cause of action, if there had been any, based on alleged false, malicious and slanderous statements regarding Grubbs made in the latter part of 1964 would be and are barred by the one-year statute of limitations contained in Article 5524 of the Revised Civil Statutes of the State of Texas. In this connection, General Electric Credit Corporation points out that T. R. Grubbs did not assert any claim on that basis until December of 1966 or early January of 1967 and that the United States of America did not assert any claim on that basis until March 20, 1968. Accordingly, General Electric Credit Corporation says that such alleged cause of action, if any, is long since barred by the said one-year statute of limitations, which said statute is specially pled as a bar to the Cross-Action asserted herein by the United States of America.

9. Answering further and without waiving any of the foregoing, General Electric Credit Corporation says that the alleged cause of action based on claimed conversion of merchandise and items of property and the other matters set forth in Paragraph III of said Cross-Action are all based on actions that occurred more than two years before any claim was asserted by T. R. Grubbs and much more than two years before the Cross-Action was filed herein by the United States of America on March 20, 1968. Such alleged causes of action, if any, are barred by the two-year statute of limitations contained in Article

5526 of the Revised Civil Statutes of the State of Texas, and said two-year statute of limitations is specially pled as a bar to the Cross-Action filed herein by the United States of America.

WHEREFORE, PREMISES CONSIDERED, General Electric Credit Corporation prays that the United States of America take nothing against it on said Cross-Action and that insofar as such Cross-Action is concerned General Electric Credit Corporation be dismissed with its costs and for such other relief to which it may be entitled.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of Carrington, Johnson & Stephens
1900 Mercantile Dallas Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric
Credit Corporation

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted
in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

DEFENDANT'S ORIGINAL ANSWER TO AMENDED ANSWER AND CROSS-ACTION OF THE UNITED STATES OF AMERICA

(Filed July 3, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, GENERAL ELECTRIC COMPANY, a Defendant in the above entitled and numbered cause, and files this its Original Answer to the Amended Answer and Cross-Action of the United States of America, and would show as follows:

FIRST DEFENSE

The Amended Cross-Action fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of the United States of America, Defendant pleads as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in the first three sentences of Paragraph I, and such allegations are therefore denied. Defendant denies the allegations contained in the fourth sentence of Paragraph I.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph II, and such allegations are therefore denied.

3. Defendant denies the allegations contained in Paragraph III.

4. Defendant denies the allegations contained in Paragraph IV.

5. Defendant denies the allegations contained in Paragraph V.

6. Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of the United States of America for injuries done to the character or reputation of T. R. Grubbs by libel or slander were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of the United States of America did not accrue within two years before the commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISE CONSIDERED, Defendant prays that Plaintiff take nothing by this suit and that this Defendant be allowed to go hence without day and recover its costs.

Rain, Harrell & Emery
/s/ Morris Harrell
Morris Harrell
/s/ Stan McMurry
Stan McMurry
4200 Republic Bank Tower
Dallas, Texas 75201
Attorneys for Defendant, General Electric Company

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

DEFENDANT GENERAL ELECTRIC COMPANY'S AMENDED ANSWER TO THE CROSS-ACTION OF T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE

(Filed October 17, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, GENERAL ELECTRIC COMPANY, a Defendant in the above entitled and numbered cause,

and files this its Amended Answer to the Defendant's Third Amended Answer and Cross-Action filed in Cause No. 17,791 in the District Court of Marion County, Texas, which is the last pleading of the Defendant, T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE which was served upon the Defendant, GENERAL ELECTRIC COMPANY, and would show as follows:

FIRST DEFENSE

The Amended Cross-Action fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, this Defendant pleads as follows:

1. Defendant denies the allegations set out in the Third Amended Original Answer of the Defendant Grubbs contained in Paragraph IX, and states with respect to all other allegations contained in Defendant's Third Amended Original Answer which was adopted by reference in Paragraph I of the Cross-Action that it is without knowledge or information sufficient to form a belief as to the truth of the allegations, and such allegations are therefore denied.

2. Defendant denies the allegations contained in Paragraph II of the Cross-Action.

3. Defendant denies the allegations contained in Paragraph III of the Cross-Action.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of the Cross-Action, and such allegations are therefore denied.

5. Defendant denies the allegations contained in Paragraph V of the Cross-Action.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of the Cross-Action, and such allegations are therefore denied.

7. Defendant denies the allegations contained in Paragraph VII of the Cross-Action.

8. Defendant denies the allegations contained in Paragraph VIII of the Cross-Action.

9. Defendant denies the allegations contained in Paragraph IX of the Cross-Action.

10. Defendant denies the allegations contained in Paragraph X of the Cross-Action.

11. Defendant denies the allegations contained in Paragraph XI of the Cross-Action.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XII of the Cross-Action pertaining to his alleged execution of a promissory note and payments thereon and the institution of suit by the United States of America, and such allegations are therefore denied, and Defendant denies all other allegations contained in Paragraph XII of the Cross-Action.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIII, and such allegations are therefore denied.

14. Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

15. Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

16. Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in said Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE for injuries done to the character or reputation of T. R. Grubbs by libel or slander (if such claims are made against the Defendant, GENERAL ELECTRIC COMPANY) were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE did not accrue within two years before the commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, Cross-Plaintiff, take nothing by this suit, and that this Defendant be allowed to go hence without day, and recover its costs.

Rain, Harrell & Emery
/s/ Morris Harrell
Morris Harrell
4200 Republic National Bank Tower
Dallas, Texas 75201
Attorneys for Defendant,
General Electric Company

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

CROSS-DEFENDANT GENERAL ELECTRIC CREDIT CORPORATION'S AMENDED ANSWER TO THE CROSS-ACTION OF T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE

(Filed October 20, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now GENERAL ELECTRIC CREDIT CORPORATION, a Cross-Defendant in the above entitled and numbered cause, and files this its Amended Answer to the Defendant's Third Amended Answer and Cross-Action filed in Cause No. 17,791 in the District Court of Marion County, Texas, which is the last pleading of the Defendant, T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE which was served upon this Cross-Defendant and would show as follows:

FIRST DEFENSE

The said Amended Cross-Action fails to state a claim against this Cross-Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, this Cross-Defendant pleads as follows:

1. Cross-Defendant denies that it or any of its agents or representatives engaged in any fraudulent or tortious conduct as alleged in Paragraph I of said Cross-Action.

2. Cross-Defendant denies the allegations contained in Paragraph II of the Cross-Action.

3. Cross-Defendant denies the allegations contained in Paragraph III of the Cross-Action.

4. Cross-Defendant denies that it or any of its agents or representatives made any false, malicious or slanderous accusations as alleged in Paragraph IV of the Cross-Action.

5. Cross-Defendant denies the allegations contained in Paragraph V of the Cross-Action.

6. Cross-Defendant denies the allegations contained in Paragraph VI of the Cross-Action.

7. Cross-Defendant denies the allegations contained in Paragraph VII of the Cross-Action.

8. Cross-Defendant denies the allegations contained in Paragraph VIII of the Cross-Action.

9. Cross-Defendant denies the allegations contained in Paragraph IX of the Cross-Action.

10. Cross-Defendant denies the allegations contained in Paragraph X of the Cross-Action.

11. Cross-Defendant denies the allegations contained in Paragraph XI of the Cross-Action.

12. Cross-Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XII of the Cross-Action pertaining to his alleged execution of a promissory note and payments thereon and the institution of suit by the United States of America, and such allegations are therefore denied, and Defendant denies all other allegations contained in Paragraph XII of the Cross-Action.

13. Cross-Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIII, and such allegations are therefore denied.

14. Cross-Defendant denies the allegations contained in Paragraph XIV of the Cross-Action.

15. Cross-Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

16. Cross-Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in said Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE for injuries done to the character or reputation of T. R. GRUBBS by libel or slander were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE did not accrue within two years before the

commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISES CONSIDERED, Cross-Defendant prays that T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, Cross-Plaintiff, take nothing by this suit, and that this Cross-Defendant be allowed to go hence without day, and recover its costs.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of: Carrington, Johnson & Stephens
1900 Dallas Mercantile Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric Credit Corporation

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted in printing.)

PORTIONS OF INTERROGATORIES BY GRUBBS AND ANSWERS BY GENERAL ELECTRIC COMPANY AND GENERAL ELECTRIC CREDIT CORPORATION

(Taken from the Reporters Transcript of Evidence in U. S. District Court.)

* * *

Interrogatory No. 12: When was General Electric Corporation incorporated and where?

ANSWER: 1892, in New York.

Interrogatory No. 14: What relation does General Electric Credit Corporation have with General Electric Corporation?

ANSWER: (Of General Electric Corporation) General Electric Credit Corporation is wholly owned subsidiary of General Electric Company. (The same answer by GECC)

Interrogatory No. 15: Is General Electric Credit Corporation a subsidiary of General Electric Corporation?

ANSWER: Both answered yes.

Interrogatory No. 16: Do General Electric Corporation and General Electric Credit Corporation have interlocking or over-lapping directorates or officials? How?

ANSWER: (General Electric Company) All the directors of General Electric Credit Corporation are officers or employees of General Electric Company.

ANSWER (GECC): Some of the officers of General Electric Company are members of the board of directors of General Electric Credit Corporation. Five of the seven directors of General Electric Credit Corporation are officers of General Electric Company.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

FINAL PRE-TRIAL ORDER

GENERAL STATEMENT OF HISTORY AND NATURE OF THE CASE

Plaintiff General Electric Credit Corporation through Messrs. Baldwin & Curry of Marshall, Texas, instituted this action against Defendant T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance, in the District Court of Marion County,

Texas on September 3, 1964. Said Plaintiff sought to recover judgment on a promissory note in the principal sum of $66,923.47, dated March 12, 1964. The action was docketed as Cause No. 17,791.

Said Defendant Grubbs through Messrs. Cornelius & Cornelius of Jefferson, answered by an unsworn general denial.

In October of 1966 after the suit had been pending a little over two years said Defendant Grubbs filed his First Amended Answer and Cross-Action. In this unsworn pleading said Defendant renewed his general denial and asserted as affirmative defenses failure of consideration and fraud in the inducement. In this pleading filed in October of 1966 said Grubbs asserted a cross-action against the Plaintiff and against General Electric Company, the latter being made a party to the suit for the first time in October of 1966. This cross-action claimed damages including punitive damages for alleged slander occurring in October, November and December of 1964, and conversion and conspiracy in restraint of trade occurring prior to the institution of the action in September of 1964.

Thereafter, in due time General Electric Credit Corporation through Messrs. Carrington, Johnson & Stephens of Dallas, Texas, filed its answer to such cross-action; and in due time said General Electric Company through Messrs. Rain, Harrell & Emery of Dallas, Texas, filed its answer to the cross-action against it.

On November 1, 1967, said T. R. Grubbs filed his Second Amended Answer and Cross-Action. In the Cross-Action part of this amended pleading and particularly in Paragraph XI thereof said Grubbs specified his reason for making the United States of America a new party defendant to the action. In said Paragraph XI 9 judgments were listed including one in favor of the United States of Amer-

ica. The State Court was asked to determine priorities among the said judgments.

On or about January 19, 1968, said Grubbs filed his Third Amended Answer and Cross-Action, which did not vary materially from the pleading that had been filed November 1, 1967.

On or about February 16, 1968 the United States of America duly filed its Petition for Removal and thereby removed this case to the Federal Court after it had been pending in the State Court approximately three and one-half years.

On or about March 20, 1968 said United States of America filed its Answer and Cross-Action. In response thereto General Electric Credit Corp. and General Electric Company duly filed motions under Rule 12. As of June 20, 1968 an order was entered requiring a more definite statement, and another order was entered requiring the making of additional party defendants. As to the more definite statement the United States of America did amend its pleading, and both General Electric Credit Corporation and General Electric Company have answered the Amended Answer and Cross-Action of the United States of America.

The order entered June 20, 1968 designated "Order Adding Parties Defendant" required that some seven new parties be added and that "Defendant T. R. Grubbs and Third Party Defendant United States of America shall amend their pleadings accordingly and serve copies of their amended pleadings together with a summons and a copy of this order on said additional parties." This was never done as required in said order. Three of the seven parties named in said order have intervened. T. R. Grubbs did not amend his pleading as required by said June 20, 1968 order.

The last pleading of Grubbs received by General Electric Credit Corporation and General Electric Company was his Third Amended Answer and Cross-Action filed in the state Court in January of 1968. General Electric Credit Corporation and General Electric Company have filed pleadings in the Federal Court responding to that State Court pleading.

List of Counsel for the Parties

Plaintiff General Electric Credit Corporation is represented by Mr. Hubert D. Johnson of Messrs. Carrington, Johnson and Stephens of Dallas, Texas.

Defendant and Cross-Plaintiff T. R. Grubbs is represented by Mr. J. R. Cornelius of Messrs. Cornelius & Cornelius of Jefferson, Texas.

Defendant General Electric Company is represented by Mr. Morris Harrell and Mr. Stan McMurry of Messrs. Rain, Harrell & Emery of Dallas, Texas.

Defendant and Cross-Plaintiff United States of America is represented by Mr. Houston Able, Assistant United States Attorney of Tyler, Texas.

The three intervenors referred to above are represented herein by their counsel of record. They are listed in Exhibit A attached.

Nature of the Action and Jurisdiction

The nature of the action is fully described in the "General Statement" set out hereinabove. The jurisdiction of this Court is based on Section 2410(a) of Title 28, U.S.C. referred in the Petition for Removal filed by the United States of America.

Statement of Claim of Plaintiff General Electric Credit Corporation

Plaintiff sued initially as the holder of a note dated March 12, 1964 in the principal sum of $66,923.48, a copy of which is attached as an exhibit to its original petition. Plaintiff also sued for 10% attorneys fees as provided for in the note.

Statement of Defenses of Defendant T. R. Grubbs

In his Third Amended Answer and Cross-Action, an unsworn pleading, Defendant Grubbs pleads:

1. a general denial;
2. total failure of consideration by virtue of alleged facts fully stated; and
3. that the execution and delivery of the note was conditioned upon certain performances by the Plaintiff and upon the truth of certain agreements and representations.

Regarding the Cross-Action of Defendant T. R. Grubbs

In this Third Amended Answer and Cross-Action said T. R. Grubbs alleges rights of recovery against General Electric Credit Corporation and General Electric Company based on the following allegations:

1. an alleged fraudulent scheme and conspiracy to put Grubbs out of business;
2. the withdrawal by General Electric Company of the franchise to Grubbs as a part of the conspiracy;
3. slanderous accusations allegedly made by representatives of General Electric Credit Corporation in October, November and December of 1964;

4. sales of repossessed merchandise by General Electric Credit Corporation in such a way as to increase the deficiency and liability of Grubbs;

5. improper repossession and releasing procedure allegedly followed by General Electric Credit Corporation;

6. a general conspiracy between General Electric Credit Corporation and General Electric Company in restraint of trade designed and calculated to produce various alleged results of such agreement being alleged to be in violation of Federal and State Anti-Trust Laws.

In such Third Amended Answer and Cross-Action Grubbs refers to nine judgments obtained against him from February 15, 1966 through December 13, 1966, including a judgment in favor of the United States of America dated July 1, 1966. This is the basis for making the United States of America a party to the cross-action by a reference to Rule 22. None of the other judgment holders were made parties or have been made parties by amended pleadings. The allegations regarding fear of multiple liability are doubtful in that the allegations show that Grubbs is fully obligated on all nine of the judgments.

Regarding the Response of Plaintiff General Electric Credit Corporation to the Cross-Action of Grubbs

Plaintiff contends that the unsworn pleading asserting failure of consideration was insufficient under Rule 93(j) of the Texas Rules of Civil Procedure.

In addition to its denials of the factual allegation said General Electric Credit Corporation further pleads:

1. That the claims based on libel or slander are barred by the one year statute of limitations, the allegations showing that the alleged slander occurred in

the fall of 1964 approximately two years before the Cross-Action was filed; and

2. that the claims in other respects were barred by the two year statute of limitations, this applying particularly to alleged conversion and tortious acts occurring prior to October of 1964.

Regarding the Cross-Action of the United States of America

The United States of America claims that its judgment lien is a prior, paramount and superior lien on the property of Grubbs. The method of making this determination among claimants that are not parties to the action is subject to doubt.

Against General Electric Credit Corporation and General Electric Company the United States of America alleges (1) that in May of 1965 Grubbs defaulted on his note to the First State Bank of Hallsville, Texas, in the original sum of $20,000.00 dated September 15, 1962; (2) that by reason of such default on June 16, 1966, the United States of America took judgment against Grubbs for $6,935.87; (3) that the default by Grubbs was directly induced and caused by various intentional acts of General Electric Credit Corporation and General Electric Company as their agents and employees; (4) that actual damages resulted to the United States of America; and (5) that the United States of America is entitled to recover punitive damages.

Regarding Responses of General Electric Credit Corporation to Cross-Action of the United States of America

In addition to denials of the factual allegations said General Electric Credit Corporation pleads for one year and two year statutes of limitations as a bar, pointing out that the claim of the United States of America based on

matters alleged to have occurred prior to December of 1964 was not filed until March 20, 1968. Said General Electric Credit Corporation also contends that there is no allegation that proper filing, indexing etc. have been done to constitute the judgment a lien or that the judgment is not collectible.

Proposed Witnesses for General Electric Credit Corporation

In its main case the Plaintiff expects to call as witnesses:

B. O. Robbins of Chattanooga, Tennessee

Howard Cole of Shreveport, Louisiana

Rebuttal witnesses will be called by said Plaintiff as may be necessary.

Witnesses of T. R. Grubbs

See Exhibit B attached.

Reference is made to the proposed Pre-Trial Order attached as Exhibit "B".

Witnesses for the United States of America

See said Exhibit B attached.

Regarding Positions of General Electric Company

Reference is made to the proposed pre-trial order submitted by counsel for General Electric Company, Exhibit "A".

Exhibits of the Plaintiff

Such exhibits are listed in Exhibit C attached.

Exhibits of T. R. Grubbs and the United States of America

Such exhibits are listed in Exhibit "B" attached, a part of the proposed Pre-Trial Order.

Other Provisions

The case will be tried before the Court without a jury. The probable length of trial is two days.

All parties may supplement the list of witnesses and exhibits at the trial for good cause shown. Each party is granted the right to call witnesses as may be necessary.

This pre-trial order may be modified at the trial or prior thereto, to prevent manifest injustice.

SIGNED this 28th day of October, 1969.

/s/ Joe J. Fisher
United States District Judge

Approved As to Form and Substance:

Hubert D. Johnson
Morris Harrell
C. Houston Abel
Bill J. Cornelius

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

MEMORANDUM OPINION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

This suit was originally filed in the District Court of Marion County, Texas, on September 3, 1964, by General

Electric Credit Corporation against T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance. T. R. Grubbs was at that time a regularly franchised dealer for the General Electric Company in Jefferson, Texas. General Electric Credit Corporation provided the financing for customers of T. R. Grubbs who purchased General Electric products.

The cause of action sought to recover judgment on a promissory note executed by T. R. Grubbs in favor of General Electric Credit Corporation dated March 12, 1964, in the principal sum of $66,923.47. T. R. Grubbs pleaded a general denial and asserted as affirmative defenses a failure of consideration and fraud in the inducement. T. R. Grubbs further in October of 1966 asserted a cross-action against the Plaintiff, General Electric Credit Corporation, and against the General Electric Company. This cross-action alleged damages recoverable for alleged slander and conspiracy to put Grubbs out of business.

On November 1, 1967, T. R. Grubbs joined the United States as a party defendant in his cross-action and requested the State District Court to determine priorities on nine judgments pending against T. R. Grubbs including one in favor of the United States. On or about February 16, 1968, the United States duly filed its petition for removal and thereby removed the case to the United States District Court for the Eastern District of Texas, Marshall Division. The United States filed a cross-action seeking a determination that its judgment lien is a prior, paramount and superior lien on the property of T. R. Grubbs; furthermore the government alleged that default by T. R. Grubbs was occasioned by the wrongful acts of General Electric Credit Corporation and General Electric Company and that the government has thereby sustained actual damages for which it seeks to recover.

Three of the creditors of T. R. Grubbs who hold unpaid judgment liens recovered in state court have intervened in this Court praying that Plaintiff, General Electric Credit Corporation, take nothing by its suit against T. R. Grubbs and that their liens be declared prior and paramount to any judgment recovered by Plaintiffs.

The cause having been tried before the Court without a jury and the Court having considered the pleadings, the evidence and the briefs filed by the respective parties and having been fully advised in the premises, now makes its findings of fact and conclusions of law.

FINDINGS OF FACT

1.

T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance, was the duly authorized and franchised dealer for the General Electric Company in Jefferson, Texas, from 1955 until August 1964.

2.

Until August, 1964, General Electric Credit Corporation provided the floor plan financing for T. R. Grubbs and also provided financing to Grubbs' customers for General Electric Company products purchased from Grubbs.

3.

On or about March 12, 1964, T. R. Grubbs executed a note in the amount of $66,923.47 payable to General Electric Credit Corporation in monthly installments of $1,500.00. This note was executed after T. R. Grubbs had met with officials of General Electric Credit Corporation in Shreveport, Louisiana, at which meeting General Electric Credit Corporation determined that certain accounts of T. R. Grubbs' customers in the amount of $66,923.47 were uncollectable.

4.

The execution and delivery of the $66,923.47 note from T. R. Grubbs to General Electric Credit Corporation was conditioned upon the agreement and understanding that General Electric Credit Corporation would continue to purchase credit accounts submitted by Grubbs which were of reasonable quality and acceptable.

5.

The amount of the $66,923.47 note from Grubbs to General Electric Credit Corporation represented the amounts of financed accounts which General Electric Credit Corporation had "charged back" to T. R. Grubbs and had required that he pay.

6.

As a part of the agreement to execute and deliver the $66,923.47 note from T. R. Grubbs to General Electric Credit Corporation the "charged back accounts" represented by the note were thereafter the property of T. R. Grubbs and he had the right to own and collect the same and foreclose with respect to same.

7.

It was the understanding and agreement of T. R. Grubbs in executing the $66,923.47 note that it would be necessary for General Electric Credit Corporation to purchase Grubbs' customers credit accounts thereafter in order for Grubbs to be able to pay the monthly installments provided for in said note.

8.

General Electric Credit Corporation repudiated the agreement to continue accepting accounts sent in by T. R. Grubbs which repudiation of said agreement was made at

a time when T. R. Grubbs' note to General Electric Credit Corporation was current.

9.

The first installment on the $66,923.47 note was timely and properly paid by T. R. Grubbs while the $66,923.47 note was on a current status, and before the second payment became due, T. R. Grubbs sent accounts to General Electric Credit Corporation for their purchase in an amount more than sufficient to enable T. R. Grubbs to make the next ensuing payment on said note. These accounts were of reasonable quality but General Electric Credit Corporation refused to accept these accounts and although General Electric Credit Corporation later did purchase them, it refused to send T. R. Grubbs the money on them, instead "crediting" the amounts thereof to Grubbs' Reserve Account.

10.

The act of General Electric Credit Corporation in refusing to promptly purchase and pay T. R. Grubbs for the accounts submitted by him prior to the due date of the second installment on said note was a violation of the agreement and condition upon which said note was given and prevented T. R. Grubbs from being able to make the second installment or any further payment on said note.

11.

That General Electric Credit Corporation sent "stop payment" letters to the customers of T. R. Grubbs informing said customers not to pay T. R. Grubbs any more money and that such letters did not sufficiently distinguish between or explain the difference between the accounts owned by General Electric Credit Corporation and those owned by T. R. Grubbs.

12.

That the effect of the mailing of the stop payment letters by General Electric Credit Corporation to the customers of T. R. Grubbs was to cause said customers to stop paying Grubbs their obligations to him.

13.

That during the period from July 1964 to January 1965 the agents, servants and employees of General Electric Credit Corporation visited many of T. R. Grubbs' customers in his trade territory and stated or represented to said customers the following:

(A) That Grubbs had cheated and defrauded General Electric Credit Corporation and such customers and that General Electric Credit Corporation was going to "close him out."

(B) That Grubbs had double financed the merchandise they bought from him and had charged them for merchandise they had not purchased.

(C) That Grubbs had not sent their payments in to General Electric Credit Corporation and that the customer had not gotten credit for their payments and possibly still owed something to General Electric Credit Corporation.

(D) That they should not pay Grubbs anything any more.

(E) That Grubbs had embezzled money from the First Baptist Church of Jefferson, Texas.

(F) That the customers should let General Electric take their property and that the customers should refuse to pay Grubbs any more and that the customers should purchase new merchandise from Oney Butane & Appliance Company.

(G) That Grubbs was being "closed out" and in the future, they should trade with Oney Butane & Appliance Company.

(H) That their receipts showed that they had been overcharged by Grubbs and their receipts showed payments by them in excess of what they owed.

14.

The allegations made by General Electric Credit Corporation's agents to T. R. Grubbs' customers that Grubbs had cheated General Electric Credit Corporation and Grubbs' customers; that Grubbs had double financed merchandise, and that Grubbs had embezzled money from the First Baptist Church of Jefferson were false.

15.

The acts of General Electric Credit Corporation against T. R. Grubbs as found herein constituted unlawful interference by General Electric Credit Corporation with the business of T. R. Grubbs and illegal restraint of trade.

16.

The acts of General Electric Credit Corporation in refusing to purchase and pay for acceptable accounts submitted by T. R. Grubbs for financing after the execution of the note in the sum of $66,923.47 and General Electric Credit Corporation's interference with the attempt of Grubbs to collect on accounts which had been charged back to him constituted failure of consideration for said note.

17.

That after General Electric Credit Corporation had repudiated its agreement with T. R. Grubbs to continue to accept the accounts of Grubbs, it then repossessed the merchandise which it had delivered to him on his floor

plan arrangement thereby stripping T. R. Grubbs' store of practically all saleable merchandise and virtually terminating his business.

18.

That the acts of General Electric Credit Corporation in refusing to allow T. R. Grubbs to work, collect or foreclose on the accounts which had been charged back to him and merged into his note deprived T. R. Grubbs of property and funds to which he was legally entitled.

19.

The effect of the acts of General Electric Credit Corporation in taking possession of and selling or converting to its own use property of T. R. Grubbs' customers on which it had no mortgage or lien was to convert and deprive T. R. Grubbs of the value of the property; that General Electric Credit Corporation refused to let T. R. Grubbs know what merchandise it had repossessed on accounts of Grubbs' customers and refused to give him the privilege of purchasing such merchandise to thereby lessen his liability thereon; that T. R. Grubbs had accounts owing to him and his store privately which had not been assigned to General Electric Credit Corporation or anyone else amounting to substantial value which accounts he was prevented from collecting by reason of the unlawful acts of General Electric Credit Corporation as found herein.

20.

That the persons committing the acts described herein on behalf of General Electric Credit Corporation were the agents, servants and employees of General Electric Credit Corporation and at all said times were acting within the scope of their employment.

21.

The actionable wrongs committed by General Electric Credit Corporation against T. R. Grubbs and his injuries resulting therefrom occurred within two years of the filing of his cross-action.

22.

The same time General Electric Credit Corporation undertook to close out T. R. Grubbs' business and committed the acts herein found, the General Electric Company refused to sell T. R. Grubbs any more merchandise and so informed T. R. Grubbs, and at such time T. R. Grubbs was a franchised dealer for General Electric.

23.

At the same time as the acts of General Electric Credit Corporation found herein were occurring, the General Electric Company made a decision to refuse to renew T. R. Grubbs' franchise as a General Electric dealer, even though said franchise did not come up for renewal until several months later.

24.

At the time when the General Electric Company decided not to renew T. R. Grubbs' Dealer Franchise, said General Electric Company issued an immediately effective Dealer Franchise to Oney Butane & Appliance Company of Jefferson, Texas.

25.

After General Electric Credit Corporation closed out T. R. Grubbs' business, the General Electric Company had no further relationship with T. R. Grubbs but that all of its business relations thereafter were with Oney Butane & Appliance Company.

26.

That General Electric Credit Corporation is a wholly owned subsidiary of General Electric Company and all of the directors of General Electric Credit Corporation are officers or employees of the General Electric Company.

27.

That although the Court's findings in Nos. 22, 23, 24 and 25 do not reflect good faith on the part of General Electric Company, and the circumstances give rise to suspicious conduct which indicates that a conspiracy existed between General Electric Credit Corporation and General Electric Company to force T. R. Grubbs out of business, the Court cannot find as a fact from a preponderance of the evidence that General Electric Company entered into any fraud, scheme or conspiracy with General Electric Company to put T. R. Grubbs out of business or to restrain trade.

28.

That the United States of America has failed to establish any right of recovery against either Plaintiff General Electric Credit Corporation or Defendant General Electric Company based on any theory and particularly based on the theory that said Plaintiff General Electric Credit Corporation or Defendant General Electric Company singly or in concert unlawfully interfered with the contractual relations existing between said Defendant Grubbs.

29.

That Plaintiff General Electric Credit Corporation has failed to establish its right to recover a judgment against Defendant T. R. Grubbs on the note in the sum of $66,923.47 executed by T. R. Grubbs on March 12, 1964, for the reason that there was a failure of consideration for the execution

of said note and because of the false and fraudulent representations made by the Plaintiff, General Electric Credit Corporation, which induced Defendant, T. R. Grubbs, to execute said note; that said note is declared void; and further Cross-Plaintiff, T. R. Grubbs, has been damaged by the unlawful acts of the Cross-Defendant, General Electric Credit Corporation, in interfering with the business operations of Cross-Plaintiff, T. R. Grubbs, resulting and forcing him out of the electrical appliance business.

30.

That as a result of General Electric Credit Corporation's unlawful acts as found herein, T. R. Grubbs has been damaged in the sum of $20,000 in actual damages.

CONCLUSIONS OF LAW

1.

That Plaintiff, General Electric Credit Corporation, is not entitled to recover judgment against the Defendant, T. R. Grubbs on the note executed dated March 12, 1964, in the sum of $66,926.47, and that said note is declared void.

2.

That the Cross-Action of Cross-Plaintiff, T. R. Grubbs, is not barred by the one or two year statute of limitation contained in Articles 5524 and 5526 of the Revised Civil Statutes of Texas.

3.

That Cross-Plaintiff, T. R. Grubbs, suffered injuries which were proximately caused by the unlawful acts or conduct of General Electric Credit Corporation, acting through its agents, servants and employees.

4.

That as a result of the unlawful acts of Cross-Defendant General Electric Credit Corporation, through its agents, servants and employees in forcing the Cross-Plaintiff T. R. Grubbs out of business damaged the Cross-Plaintiff Grubbs in the loss of expected profits and other consequential damages, including loss of business reputation all in the sum of $20,000.00.

5.

That the United States of America is not entitled to recover anything against either General Electric Credit Corporation or General Electric Company.

6.

That Cross-Plaintiff T. R. Grubbs is not entitled to recover anything from the Defendant, General Electric Company.

7.

That the Court cannot determine priority of liens as among the various parties, including the United States of America claiming judgment liens against T. R. Grubbs.

Judgment will be entered for Cross-Plaintiff T. R. Grubbs in the sum of $20,000.00 with costs taxed against General Electric Credit Corporation; that Cross-Plaintiffs, T. R. Grubbs and the United States of America, take nothing as against the Defendant, General Electric Company, and denying all other relief prayed for by the parties seeking a determination of priorities of their liens against Defendant Grubbs.

ENTERED this 20th day of March, 1970.

/s/ Joe J. Fisher

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

JUDGMENT

BE IT REMEMBERED that on the 20th day of October, A.D., 1969, came on to be heard the above styled and numbered cause at the special date and time set by the Court for the trial of said cause on the merits and thereupon came and appeared all parties herein, in person or through their duly authorized attorneys of record, and all parties announced ready for trial, and a jury being waived by all parties and the case being submitted to the Court for determination, both as to law and facts. The Court thereupon proceeded to hear the evidence adduced by all parties and the argument of counsel, and the Court having requested and received briefs from parties which were duly considered, the Court thereupon found and made certain facts and conclusions of law which are filed in this cause and are here referred to; and the Court thereupon determined that the facts and the law were with the Cross-Plaintiff, T. R. Grubbs, as against the Cross-Defendant, General Electric Credit Corporation, and that all other relief sought by all parties herein should be denied, and it is therefore,

ORDERED, ADJUDGED and DECREED that the Cross-Plaintiff, T. R. Grubbs, have and recover, of and from the General Electric Credit Corporation, damages in the sum of Twenty Thousand and No/100 ($20,000.00) Dollars with interest at the rate of six (6%) percent per annum from date of Judgment until paid, and for all costs of suit. It is further ORDERED that the promissory note from T. R. Grubbs and wife, Syble Grubbs, to General Electric Credit Corporation in the sum of $66,923.47 which is dated March 12, 1964, and which is described in the petition of General Electric Credit Corporation on file herein, be and the same is hereby cancelled and held to be void and of no force or validity, and further that T. R. Grubbs recover nothing against either the General Electric Company and the United States recover nothing against either the General Electric Company or the General Electric Credit Corporation, and that the General Electric Credit Corporation recover nothing against T. R. Grubbs or T. R. Grubbs Tire and Appliance and further that the requests of parties herein for a determination of priority of liens is hereby denied, and that all relief not specifically granted herein is specifically denied.

RENDERED this the 10th day of April, A.D., 1970.

/s/ Joe J. Fisher
United States District Judge

OPINION OF UNITED STATES COURT OF APPEALS

(This is contained in Petitioner's Petition for Writ of Certiorari and will not be printed in this Appendix, see page A-1 of the Petition for Writ of Certiorari.)